

STATE OF INDIANA )

IN THE ALLEN CIRCUIT COURT

COUNTY OF ALLEN )

) SS:

CAUSE NO.

~~02C01-0606-PL-70~~ **02C01-0606-PL-70**

STATE OF INDIANA, )

Plaintiff, )

v. )

DANIEL H. TURKETTE, and )  
THE GREAT AMERICAN )  
SPICE COMPANY, INC., )

Defendant. )

FILED BY  
CERTIFIED OR REGISTERED MAIL  
T.R.5 (F)

**JUN 09 2006**

**COMPLAINT FOR INJUNCTION,  
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court, pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, for injunctive relief, consumer restitution, costs, civil penalties, and other relief.

**PARTIES**

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5.0.5-4(c).
2. The Defendant, Daniel H. Turkette, is an individual engaged in the sale of goods to consumers via the Internet from his principal place of business, located in Allen County, at 628 Leesburg Road, Fort Wayne, Indiana, 46808-2500.

3. The Defendant, The Great American Spice Company, Inc., is a for-profit domestic corporation engaged in the sale of goods to consumers via the Internet from its principal place of business, located in Allen County, at 628 Leesburg Road, Fort Wayne, Indiana, 46808-2500.

4. The Defendant, Daniel H. Turkette, serves as President of the Defendant Corporation, The Great American Spice Company, Inc. Upon information and belief, the Defendant, Daniel H. Turkette, has failed to operate the Defendant Corporation as a distinct entity and has used the Defendant Corporation to defraud others.

### **FACTS**

#### **A. Allegations Related to Consumer Geary Norris' Transaction.**

5. On or about July 21, 2004, the Defendants entered into a contract via the Internet with Geary Norris ("Norris") of Slater, Missouri, wherein the Defendants represented they would sell spices to Norris for Fifty-One Dollars and Thirty-One Cents (\$51.31), which Norris paid.

6. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the sale they would deliver the spices within a reasonable period of time.

7. As of today, the Defendants have yet to either deliver the spices, or to provide a refund to Norris.

#### **B. Allegations Related to Consumer Ken Stringer's Transaction.**

8. On or about August 5, 2004, the Defendants entered into a contract via the Internet with Ken Stringer ("Stringer") of Fenton, Missouri, wherein the Defendants

represented they would sell spices to Stringer for Thirty-Eight Dollars and Sixty-One Cents (\$38.61), which Stringer paid.

9. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the sale they would deliver the spices within a reasonable period of time.

10. As of today, the Defendants have yet to either deliver the spices, or to provide a refund to Stringer.

**C. Allegations Related to Consumer Muriel Castain's Transaction.**

11. On or about August 6, 2004, the Defendants entered into a contract via the Internet with Muriel Castain ("Castain") of North Babylon, New York, wherein the Defendants represented they would sell spices to Castain for Twenty-Five Dollars (\$25.00), which Castain paid.

12. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the sale they would deliver the spices within a reasonable period of time.

13. As of today, the Defendants have yet to either deliver the spices, or to provide a refund to Castain.

**D. Allegations Related to Consumer Thomas L. Brown's Transaction.**

14. On or about August 20, 2004, the Defendants entered into a contract via the Internet with Thomas L. Brown ("Brown") of Rodersdorf, Switzerland, wherein the Defendants represented they would sell spices to Brown for One Hundred Seventeen Dollars and Sixty Cents (\$117.60), which Brown paid.

15. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the sale they would deliver the spices within a reasonable period of time.

16. As of today, the Defendants have yet to either deliver the spices, or to provide a refund to Brown.

**E. Allegations Related to Consumer Karen Braymen's Transaction.**

17. On or about October 24, 2004, the Defendants entered into a contract via the Internet with Karen Braymen ("Braymen") of Ames, Iowa, wherein the Defendants represented they would sell spices to Braymen for Thirty-Five Dollars (\$35.00), which Braymen paid.

18. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the sale they would deliver the spices within a reasonable period of time.

19. As of today, the Defendants have yet to either deliver the spices, or to provide a refund to Braymen.

**F. Allegations Related to Consumer Alan Kearney's Transaction.**

20. On or about December 9, 2004, the Defendants entered into a contract via the Internet with Alan Kearney ("Kearney") of Jupiter, Florida, wherein the Defendants represented they would sell a hot cinnamon toothpick kit to Kearney for Twenty Dollars and Seventy-Four Cents (\$20.74), which Kearney paid.

21. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the sale they would deliver the hot cinnamon toothpick kit within a reasonable period of time.

22. As of today, the Defendants have yet to either deliver the hot cinnamon toothpick kit, or to provide a refund to Kearney.

**G. Allegations Related to Consumer Cindy M. Giles' Transaction.**

23. On or about November 20, 2005, the Defendants entered into a contract via the Internet with Cindy M. Giles ("Giles") of Newport, Tennessee, wherein the Defendants represented they would sell spices to Giles for Seventy-One Dollars and Thirty-Two Cents (\$71.32), which Giles paid.

24. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the sale they would deliver the spices within a reasonable period of time.

25. As of today, the Defendants have yet to either deliver the spices, or to provide a refund to Giles.

**H. Allegations Related to Consumer Rachel Traub's Transaction.**

26. On or about November 20, 2005, the Defendants entered into a contract via the Internet with Rachel Traub ("Traub") of Somerville, Massachusetts, wherein the Defendants represented they would make a monthly delivery of spices to Traub for a one (1) year period, at a total cost of One Hundred and Twenty-Nine Dollars and Thirty-Six Cents (\$129.36), which Traub paid.

27. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the sale they would deliver the spices within a reasonable period of time.

28. As of today, the Defendants have yet to either deliver the spices, or to provide a refund to Traub.

**I. Allegations Related to Consumer Molly Markley's Transaction.**

29. On or about November 25, 2005, the Defendants entered into a contract via the Internet with Molly Markley ("Markley") of Hamilton, Ohio, wherein the Defendants represented they would make a monthly delivery of candy to Markley for a one (1) year period, at a total cost of Eighty-Five Dollars and Ninety Cents (\$85.90), which Markley paid.

30. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the sale they would deliver the candy within a reasonable period of time.

31. While the Defendants did deliver one (1) month of candy, as of today, the Defendants have yet to either deliver the remainder of the candy shipment, or to provide a refund to Markley.

**J. Allegations Related to Consumer Phillip King's Transaction.**

32. On or about December 15, 2005, the Defendants entered into a contract via the Internet with Phillip King ("King") of Des Plaines, Illinois, wherein the Defendants represented they would make a monthly delivery of spices to King for a one (1) year period, at a total cost of One Hundred Twenty-Nine Dollars and Thirty-Six Cents (\$129.36), which King paid.

33. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the sale they would deliver the spices within a reasonable period of time.

34. While the Defendants did deliver one (1) month of spices, as of today, the Defendants have yet to either deliver the remainder of the spices, or to provide a refund to King.

**K. Allegations Related to Consumer S. Scott Clackum's Transaction.**

35. On or about December 21, 2005, the Defendants entered into a contract via the Internet with S. Scott Clackum ("Clackum") of Charlotte, North Carolina, wherein the Defendants represented they would make a monthly delivery of spices to Clackum for a one (1) year period, at a total cost of One Hundred Forty-Eight Dollars and Fifty Cents (\$148.50), which Clackum paid.

36. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the sale they would deliver the spices within a reasonable period of time.

37. While the Defendants did deliver one (1) month of spices, as of today, the Defendants have yet to either deliver the remainder of the spices, or to provide a refund to Clackum.

**L. Allegations Related to Consumer James Bernath's Transaction.**

38. On or about January 21, 2006, the Defendants entered into a contract via the Internet with James Bernath ("Bernath") of Englewood, Colorado, wherein the Defendants represented they would sell two (2) bottles of hot sauce to Bernath for Seventeen Dollars and Fifty-Three Cents (\$17.53), which Bernath paid.

39. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the sale they would deliver the sauces within a reasonable period of time.

40. As of today, the Defendants have yet to either deliver the sauces, or to provide a refund to Bernath.

**COUNT I – VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT**

41. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 40 above.

42. The transactions referred to in paragraphs 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, and 38 are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(a)(1).

43. The Defendants are “suppliers” as defined by Ind. Code § 24-5-0.5-2(a)(3).

44. The Defendants’ representations to consumers they would sell items to consumers, when the Defendants knew or reasonably should have known the consumers would not receive any such benefit, as referenced in paragraphs 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, and 38, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

45. The Defendants’ representations to consumers the Defendants would deliver the items, or otherwise complete the subject matter of the consumer transactions within a reasonable period of time, when the Defendants knew or reasonably should have known they would not, as referenced in paragraphs 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, and 39, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

46. The Defendants’ representations to the consumers they would be able to purchase the items as advertised by the Defendants, when the Defendants did not intend to sell the items as represented, as referenced in paragraphs 5, 8, 11, 14, 17, 20, 23, 26,



29, 32, 35, and 38, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

**COUNT II – KNOWING AND INTENTIONAL VIOLATIONS OF  
THE DECEPTIVE CONSUMER SALES ACT**

47. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 46 above.

48. The misrepresentations and deceptive acts set forth in paragraphs 5, 6, 8, 9, 11, 12, 14, 15, 17, 18, 20, 21, 23, 24, 26, 27, 29, 30, 32, 33, 35, 36, 38, and 39 were committed by the Defendants with the knowledge and intent to deceive.

**RELIEF**

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants, The Great American Spice Company, Inc. and Daniel H. Turkette, for a permanent injunction pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendants from the following:

- a. representing expressly or by implication the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have, which the Defendant know or reasonably should know it does not have;
- b. representing expressly or by implication the Defendants are able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendants know or reasonably should know they cannot; and

- c. representing expressly or by implication the consumer will be able to purchase the subject of a consumer transaction as advertised by the Defendants, if the Defendants do not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendants, The Great American Spice Company, Inc. and Daniel H. Turkette, for the following relief:

- a. cancellation of the Defendants' unlawful contracts with all consumers, including, but not limited to, the persons identified in paragraphs 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, and 38, pursuant to Ind. Code § 24-5-0.5-4(d).
- b. consumer restitution, pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers for the purchase of items from the Defendants, including, but not limited to, those persons identified in paragraphs 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, and 38, in an amount to be determined at trial;
- c. costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. on Count II of the Plaintiff's complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Five

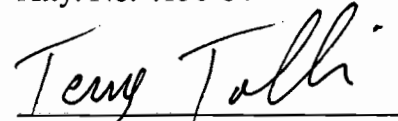
Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;

- e. on Count II of the Plaintiff's complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-8, for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- f. all other just and proper relief.

Respectfully submitted,

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